

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 432 OF 2016

SMT. FELICIA GOMES ALIAS MARIA
FELICIA GOMES AND 8 ORS., ... Petitioners

Versus

SHRI. RAMAKANT ANANT AMONKAR (DEC)
REP. BY HIS LRS., AND 19 ORS., ... Respondents

Shri Joseph Rodricks, Advocate for the
Petitioners.

Shri Devidas Pangam, Advocate for Respondent Nos.
1(a) to 1(d) and 2.

CORAM:- C. V. BHADANG, J.

DATE:- 24th OCTOBER, 2016

ORAL ORDER:

Heard the learned Counsel for the
petitioners and the learned Counsel for the
respondent nos. 1(a) to 1(d) and 2.

2. The petitioners, who are the landlords are
challenging the judgment and order dated
04.01.2016 passed by the learned District Judge,
South Goa at Margao in Rent Appeal No. 59/2013.

By the impugned order, the appeal filed by respondent nos. 1(a) to (d) and 2 (hereinafter referred to as the contesting respondents, for short), has been allowed and the matter has been remanded to the Rent Controller.

3. The brief facts are that, the petitioners have filed an application for eviction of the contesting respondents, on the ground of arrears of rent. In the said application, the petitioners applied under Section 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act, for short). The learned Rent Controller allowed the said application by order dated 30.04.2013, directing the contesting respondents to hand over, vacant possession of the house in question, within 60 days. This was challenged by the contesting respondents before the learned District Judge. It appears that in the said appeal also, the petitioners filed an application under Section 32(4) of the said Act, as there was non payment of rent. Be that as it

may, the Appellate Court has set aside the order dated 30.04.2013 passed by the learned Rent Controller and remanded the matter back for deciding it afresh.

4. I have heard Shri Rodricks, the learned Counsel for the petitioners and Shri Pangam, the learned Counsel for the contesting respondents. With the assistance of the learned Counsel for the parties, I have gone through the order passed by the learned Rent Controller and the learned District Judge.

5. On behalf of the petitioners, reliance is placed on the decision of this Court in the case of **R.G. Gangadharan Vs. Francisco Barreto Lopes and Another, 1995(2) BOM. C.R. 207**, in order to submit that the order passed by the Rent Controller was interlocutory and as such, no appeal lies in this case. It is submitted that the case of **R.G. Gangadharan** (supra) was brought to the notice of the learned District Court. He

submits that the appeal ought not to have been entertained. It is submitted that the order of the Rent Controller is not a final order, in as much as application under Section 22 of the Act is still pending.

Reliance is then placed on the decision of the full bench of this Court, in the case of **Dinanath Rama Naik (since deceased) through LR's and Others Vs. Prabha Rane, 2013(1) BOM C.R. 481,** in order to submit that an application under Section 32(4) of the Act, by the landlord, is maintainable in an appeal filed by the tenant. It is submitted that even according to the contesting respondents, they are paying rent of the suit house and as such, the contesting respondents were tenants and the learned District Judge could not have directed enquiry under Section 21 of the said Act.

6. On the contrary, it is submitted by Shri Pangam, the learned Counsel for the contesting respondents that the order passed by the Rent

Controller, allowing the application under Section 32(4) of the Act, cannot be said to be an interlocutory order. It is submitted that the case of **R.G. Gangadharan** (supra) is distinguishable on facts, as in that case, application under 32(4) was rejected. Insofar as merits of the matter, are concerned, the learned Counsel for the contesting respondents does not dispute that in an appeal filed by the tenant, the landlord can file an application under Section 32(4) of the Act, as held by the full bench of this Court. It is submitted that in this case, there is bonafide dispute as to whether the contesting respondents are tenants as claimed by the petitioners or they are mundkars as claimed by them. It is submitted that in view of this, the learned District Judge was justified in sending the matter back.

7. I have carefully considered the rival circumstances and the submission made. Insofar as the ground of non maintainability of the appeal

before the learned District Judge is concerned, to my mind, the same cannot be accepted. In the case of **R.G. Gangadharan** (supra), the application filed by the landlord under Section 32(4) of the Act was dismissed and this Court held that no appeal would lie in such a case. In the present case, the application was allowed. It is now well settled that an interlocutory order is not a converse of the final order. Thus an order which is not final, may not necessarily be interlocutory. There are certain orders which, although may not be final, may still not be interlocutory. It is further well settled that orders which decide the rights of the parties, in relation to the material controversy involved, cannot be said to be interlocutory in nature. It is only the orders which are mere steps-in-aid, can be said to be interlocutory orders (see the case of **Madhu Limaye Vs. The State of Maharashtra, AIR 1978 SC 47**). The order challenged before the District Judge was one by which, the contesting respondents were directed to vacate the suit house. Such an order,

which clearly decides the rights of the parties and brings the proceedings to an end, to my mind cannot be said to be interlocutory order. The contention in this regard has to be refuted.

8. Coming to the merits of the matter, the case set up by the contesting respondents is that they are the mundkars of the dwelling house although, they are paying rent in respect of the land. This Court in the case of **Gopal Mahadev Sawant and Others Vs. Mariano S. Jose Godinho and Others, 1990 (2) Goa L.T. 347**, has *inter alia* held that mere fact that a person is paying rent for the land on which the house is standing, would not exclude him from the category of mundkar under the provisions of Section 2(p)(i) of the Mundkar Act.

In such circumstances, there is a disputed question of fact and law, which arises and which has to be gone into by the Rent Controller. The existence of landlord-tenant relationship is the very basis of the application filed before the Rent Controller. Thus, I do not find that any

exception can be taken to the impugned judgment passed by the learned District Judge. At the same time, I find that the main application filed by the petitioners is of the year 2009. In such circumstances, it would be appropriate if, the proceedings are expedited.

9. In the result, the writ petition is dismissed, with no order as to costs. The learned Trial Court shall decide the application, as expeditiously as possible and preferably within a period of six months from the receipt of this order. Rival contentions of the parties are left open. Parties to co-operate for the time bound disposal of the matter.

C.V. BHADANG, J.

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